The only cases in which such an objection of want of charter power could affect title, are those where the right rests merely in contract, and can only be enforced by action. In such cases the right is a mere right of contract, and not a right of property, and can only be enforced by action; and in such action on the contract, the want of charter power to make it could be set up in bar. And this is all that was ever decided in the case of Dandridge in our Court of Appeals, to which reference has sometimes been made, where in an action on the contract, and on a case presenting a contract whose whole *objects* were without the charter, and of an entirely different character from those stated in the charter, and not for the purpose of promoting any object mentioned in the charter but others entirely distinct, the objection of want of charter power was sustained. And this may be admitted to be true as to all mere *executory* contracts without the charter; but the objection never affects the title to property actually acquired under *executed contracts*.

What then is the position of the property sold in this case, viz. the Bonds? Actually delivered to a third party, to be handed over by him to the companies on payment of the contract price. The property is gone from the State; and the delivery has been to one who may be likened to a stakeholder, of the property for one party, of the money for the other. There is nothing resting in contract only between the parties, to be enforced only by action. Take then any other illegal contract, executed as this contract, and what is the result? As in the case of a gambling debt, where the money lost has been paid to a third party to be given to the owner: or an usurious debt, where the usurious interest illegally acquired has been so handed over; where it is evident that notwithstanding the illegality of the contract, the money could not be reclaimed. And these cases are stronger than the present; because in them the illegality is in the object of the contract, whilst here it consists only in the incompetency of one of the parties to make it. It is sufficient to present this question for the reflections of others, without further examination of it.

The inexpediency of a judicial controversy over these contracts has already appeared: and is it not now obvious, that even to take the most favorable view of the case, it is in a high degree probable that in any such contest, the contracts would be held good and binding, and the part left to the State would be to pay the fees and costs of the proceeding? At all events, every one will admit that it is at least doubtful: and why for the mere object of contesting a *barren* question of law, involve the State in a controversy, not only profitless to herself, but also one in which the most complete victory could never compensate for the vast injury she would draw down, as well upon herself, as her adversaries in that contest, the Companies. It would be a case in which victory to either party would be assured and almost irreparable loss to both. Its probable consequences have already been faintly sketched. But there are others which it becomes the guardians of the public interest to weigh well before they plunge the